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A-S

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/215,951	12/18/98	FELL J	659/489

IM22/1215

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EXAMINER	
CHEVALIER, A	
ART UNIT	**PAPER NUMBER**
1772	11

DATE MAILED: 12/15/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/215,951	FELL ET AL.	
	Examiner	Art Unit	
	Alicia Chevalier	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 October 2000* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12, 14-18, and 48-50* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-12, 14-18, and 48-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *6-8* .
18) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other:

RESPONSE TO AMENDMENT

Election/Restrictions

1. Applicant's election of CLAIMS 1-18 and 48-50 in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

WITHDRAWN REJECTIONS

2. The Double Patenting objection of record in paper #5, page 5, paragraph #5 has been withdrawn due to Applicant's amendment in paper #10

3. The 35 U.S.C. §112 rejections of record in paper #5, pages 5-6, paragraph #7, has been withdrawn due to Applicant's amendment in paper #10.

REJCTIONS REPEATED

4. The 35 U.S.C. §102 rejection of claims1-12, 14-18, and 48-50 as anticipated by Pieniak (5,098,423) is repeated for reasons previously of record in paper #5, pages 6-7, paragraph #9.

5. The 35 U.S.C. §102 rejection of claims1-12, 14-18, and 48-50 as anticipated by Kielpikowski (6,056,733) is repeated for reasons previously of record in paper #5, pages 7-8, paragraph #11.

ANSWERS TO APPLICANT'S ARGUMENTS

6. Applicant's arguments filed in paper #10 regarding the 35 U.S.C. §102 rejections of record of claims 1-18 have been carefully considered but are deemed unpersuasive.

Applicant argues that neither Pieniak nor Kielpikowski disclose or suggest the composite of claim 1 or how to make a composite that obtains 85% of the elongation of the elastics used in the composite.

As stated in the previous office action, Pieniak teaches:

> The elastic members have an extensibility to rupture of at least about 150% and a recovery at 50% elongation of at least 50%, which clearly may include composites having a maximum elongation of at least 85%, 90%, and 95%.

And Kielpikowski teaches:

> The elastomeric thread comprises any elastomeric material capable of being at least about 50%, desirably about 350% and capable of recovering to within at least 250%, desirably about 150% of its original length after being elongated about 300%.

Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Therefore, the *prime facie* case can be rebutted by evidence showing that the prior art products do not necessarily process the characteristics of the claimed product. *In re Best*, 562 F.2d at 1255, 195 USPQ at 433.

7. Applicant's arguments filed in paper #10 regarding the 35 U.S.C. §102 rejections of record of claims 48-49 have been carefully considered but are deemed unpersuasive.

Applicant argues that neither Pieniak nor Kielpikowski discloses or suggests "attached zones extending traverse and across a majority of the elastic members." As Applicant has pointed out Pieniak teaches the elastic elements may be adhesively secured in position, or other wise secured (col. 6, lines 39-20). Thus defining an attachment zone that traverses all the elastic elements. The fact that Pieniak is silent as to any pattern that is used for the application of the adhesive to secure the elastics is irrelevant since applicant is not claim a particular pattern to the attached zones. As stated in the previous office action Kielpikowski teaches that the ends of the elastomeric thread can be attached to the barrier layer by an method known to those in the art ... (col. 5, lines 14-27). Thus defining an attachment zone that traverses the ends of the elastomeric threads. Kielpikowski is related to the present invention because it teaches a similar composite material.

8. Applicant's arguments filed in paper #10 regarding the 35 U.S.C. §102 rejections of record of claims 48-49 have been carefully considered but are deemed unpersuasive.

Applicant argues that claim 50 which contains the limitations of claims 1 and 48 and for the reasons presented earlier in the Response, is therefore not anticipated by either Pieniak or Kielpikowski. See above arguments for why Pieniak and Kielpikowski both anticipate claims 1 and 48.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Ellis P. Robinson can be reached by dialing (703) 308-2364. The fax phone number for the organization official non-final papers is (703) 305-5436. The fax number for after final papers is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac
12/13/00

Ellis Robinson
Supervisory Patent Examiner
Technology Center 1700